

Docket No.: 00-4064
(PATENT)REMARKS

Claims 1, 3, and 6-35 are pending. In the Office Action, claims 1-17 and 34 were rejected under 35 U.S.C. § 102(b) as anticipated by US 5,812,638 to Muller ("Muller"). Claims 18-33 and 35 were rejected under 35 U.S.C. § 103(a) as obvious over Muller.

In the present response, Applicants have amended claims 1, 3, 6, 9, 18, 23, 28, 30, and 34. Claims 2, 4, and 5 are canceled, and their subject matter has been incorporated into amended claim 1. In light of the foregoing amendments and the following remarks, Applicants respectfully submit that all pending claims are in condition for allowance.

Claims 1, 9, 28, 30 and 34: "unique call identifier"

Independent claims 1, 9, and 34 were each rejected under Section 102 as anticipated by Muller. Independent claims 28 and 30 were rejected under Section 103 as obvious over Muller. These claims each recite, among other limitations, "*assigning a unique call identifier to the incoming call.*" However, Muller does not teach or suggest assigning a unique call identifier. Rather, Muller teaches at most a system that processes incoming calls in the order received without assigning a unique call identifier. (Col. 5, lines 18-20.)

Muller discloses a telephone queuing system that processes incoming calls to a directory assistance facility. (Figs. 1-3.) Muller's system includes the following elements: a recording system for incoming calls 22, a queuing system 28 for holding calls that cannot be connected immediately to an operator, and a replaying system 42 for replaying the recorded message to the operator. Thus, the system taught by Muller prompts an incoming caller to provide information that is temporarily recorded and stored. (Col. 4, lines 35-61.) Once the information provided by the incoming caller has been recorded and/or stored, the information may be forwarded or communicated to the operator, who will use the information to search for the telephone number of the desired party. (Col. 5, lines 10-14.) During high volume periods, the incoming caller may not be immediately connectable with an operator. (Col. 5, lines 14-16.) Therefore, Muller's queuing system 28 serves as a reservoir that holds incoming calls until an operator is available. (Fig. 2; Col. 5, lines 20-22.) The queuing system 28 may be "conventionally implemented in a switch" and does no more than "link the operator . . . to an incoming caller in the queue." (Col 5, lines 15-27; Figures 1-5)

As is clear from the foregoing description of Muller's system, Muller, unlike the present invention, requires a first in, first out (FIFO) process. Accordingly, with respect to Muller's system, there is no need to assign a unique identifier because each incoming call is

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processed in the order received. (Col. 1, lines Figures 2-5.)

Contrary to the Examiner's assertion (Office Action, page 3), it is not inherent that a call identifier be associated with the call. As the Federal Circuit has explained, "[i]nherency... may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Scaltech Inc. v. Retec/Tetra L.L.C.*, 51 USPQ2d 1055 (Fed. Cir. 1999). Muller does not expressly teach or suggest *assigning a unique call identifier* to the incoming call. Moreover, because Muller's queuing system is necessarily a FIFO process, Muller has no need to employ a unique call identifier. Rather, Muller's system can simply rely on the order in which calls were received.

Thus, for at least the foregoing reasons, claims 1, 9, 28, and 34 are patentable over the prior art of record. Furthermore, claims 3 and 6-8 are patentable by reason of dependence from claim 1, and claim 29 is patentable by reason of dependence on claim 28.

Claims 1, 10, 18, and 23: "switching device"

Independent claims 1 and 10 were rejected under Section 102 as anticipated by Muller. Independent claims 18 and 23 were rejected under Section 103 as obvious over Muller. Claim 1 recites "transferring the incoming call from the voice response device (VRU) *back to the switching device*." Similarly, claim 10 recites "a voice response device configured to receive the incoming call from the switching device," as well as "a voice response device configured to receive the incoming call from the switching device, prompt the caller to provide audio input relating to the incoming call, record the audio input, and send the incoming call to the switching device for transmitting to an available one of the service agents." Claims 18 and 23 contain similar limitations. Thus, the present claims clearly require a switching device that sends and receives calls within the inventive system, as well as receives calls from without the system. Muller, in contrast, teaches unidirectional processing of incoming calls. (See Figures 2-5.) According to Muller, as set forth above, the incoming call is prompted, recorded, placed in the queuing system 28, and then provided to the operator.

Claims 1 and 10 require receiving an incoming call at a switching device, routing the call to the voice response device, storing the audio input in a file associated with the unique call identifier; and transferring the incoming call from the voice response device *back to the switching device*. Thus, there is *bi-directional* communication between the Automated Call Distributor/Private Branch exchange (ACD/PBX) 130 and the Voice Response Unit (VRU) 140. There is no teaching or suggestion that the system disclosed by Muller includes bi-

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directional communication between the queuing system and the recording system 22.

In fact, Muller teaches away from the bi-directional communication of the present invention in that an object of Muller's invention is to "increase customer satisfaction by reducing operator response time." (Col. 1, lines 43-44.) Incorporating bi-directional communications between Muller's queuing system 28 and recording system 22 would negatively impact the speed at which incoming calls are processed. As such, regardless of whether the examiner is correct that a switching device is inherent in receiving a telephony call (Office Action, page 2), clearly it is not inherent that there be bi-directional communication between the ACD/PBX 130 and the VRU 140.

For at least the foregoing reasons, independent claims 1, 10, 18 and 23 are patentable over the prior art of record. Further, claims 3, 6-8, 11-17, 19-22, and 24-27 are patentable at least by reason of their dependence on one of the foregoing independent claims.

Claims 18, 23, and 31: conferencing or forwarding initiated and incoming calls

Independent claims 18 and 23, along with dependent claim 31, were rejected under Section 103 as obvious over Muller. Claims 18, 23, and 31 each recite conferencing or forwarding an initiated call and/or an incoming call to permit a service agent to service an incoming call. The Examiner acknowledges that Muller does not teach this limitation. (Office Action, page 5.) However, the Examiner asserts that "many methods of connecting a caller to an operator/agent are known and commonly used methods are that of conferencing an forwarding." The Examiner further asserts that "it would have been obvious to one of ordinary skill at the time the invention was made to have implemented the call processing system of Muller in the various ways because they are all . . . well known and commonly used."

Applicants respectfully submit that the Examiner has failed to state a *prima facie* case of obviousness with respect to claims 18, 23, and 31, for at least three reasons. First, the Examiner has not provided support in the prior art for each and every limitation of claims 18, 23, and 31. Rather, the Examiner has simply asserted, without support, that call conferencing and/or forwarding are well known. Second, the Examiner has not even addressed the limitation in Applicants' claims of conferencing an initiated call with an incoming call to permit a service agent to service an incoming call. Even if call conferencing and/or forwarding are well known, this mere fact does not read on Applicant's claims. Third, even if the Examiner had provided support in the prior art for the limitation of conferencing and/or forwarding an initiated call with an incoming call to permit a service agent to service an

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incoming call, the Examiner still has not stated any motivation for modifying Muller to implement this limitation. Applicants respectfully submit that merely stating that something is well known is not a sufficient statement of motivation to modify a prior art reference.

To the extent that the Examiner believes that support for a *prima facie* case of obviousness with respect to claims 18, 23, and 31 is found in the prior art or is supported by Official Notice, Applicants respectfully request that the Examiner provide documentary evidence of this support in the form of a prior art reference or affidavit pursuant to 37 CFR § 1.104(d)(2) and MPEP § 2144.04.

Accordingly, claims 18, 23, and 31 are in condition for allowance for at least the foregoing reasons. Claims 19-22, 24-27, and 32 are patentable at least by reason of their dependence on the foregoing.

Claims 21, 24, 33, and 35: acknowledgement that audio input has been heard

Dependent claims 21, 24, 33, and 35 were rejected under Section 103 as obvious over Muller. Claims 21 and 24 recite that "the voice response device is further configured to wait for an acknowledgement that indicates that the available service agent has heard the recorded audio input". Claims 33 and 35 similarly recite that "waiting for an acknowledgement that indicates that the available service agent has heard the audio input". The Examiner acknowledges (Office Action, pages 5-6) that Muller does not teach this claim limitation, but rather teaches manipulating the timing of audio input to match the time it takes an agent to process recorded information. Thus, Muller clearly teaches against Applicants' recited limitation, inasmuch as in Muller's system there would be no reason to wait for an acknowledgement that audio input has been heard.

Moreover, the Examiner has plainly failed to state a *prima facie* case of obviousness with respect to claims 21, 24, 33, and 35, for at least two reasons. First, the Examiner has not provided a prior art reference teaching an acknowledgement of audio input before a call is connected. Second, even if the prior art did teach or suggest such a limitation, the Examiner has not provided any support in the prior art for any motivation to modify Muller with this limitation. Further, as noted above, Muller is incapable of the proposed modification because Muller allows no opportunity for an acknowledgement of audio input.

To the extent that the Examiner believes that support for a *prima facie* case of obviousness with respect to claims 21, 24, 33, and 35 is found in the prior art or is supported by Official Notice, Applicants respectfully request that the Examiner provide documentary evidence of this support in the form of a prior art reference or affidavit pursuant to 37 CFR §

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1.104(d)(2) and MPEP § 2144.04.

Accordingly, claims 21, 24, 33, and 35 are in condition for allowance for at least the foregoing reasons.

CONCLUSION


In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. If the Examiner believes that a personal interview with Applicants' representative would advance prosecution of this application, the Examiner is invited to telephone the undersigned.

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account 07-2347, under Order No. 00-4064 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to the aforementioned account.

Respectfully submitted,

Dated: July 6, 2004

By


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